IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

FRIDAY, THE 7TH SEPTEMBER 2007 / 16TH BHADRA 1929

OP.No. 19330 of 1998(A)

PETITIONERS:

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1) GIJI J.PRASAD, W/O.JAGANATH PRASAD,
C.S.SADANAM, T.B. ROAD, KOTTAYAM.

2) C.SAHADEVAN, C.S. SADANAM,
T.B. ROAD, KOTTAYAM.

BY ADV. SRI.BECHU KURIAN THOMAS

RESPONDENTS:

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1) STATE OF KERALA, REPRESENTED BY
SECRETARY, MINISTRY OF CIVIL SUPPLIES,
GOVT. SECRETARIAT, THIRUVANANTHAPURAM.

2) UNION OF INDIA, REPRESENTED BY
SECRETARY, DEPT. OF CIVIL SUPPLIES,
NEW DELHI.

3) DISTRICT CONSUMER REDRESSAL FORUM,
KOTTAYAM.

4) K.S.RAJENDRAN, CIRCLE INSPECTOR OF POLICE,
WEST POLICE STATION, KOTTAYAM.

5) P.K.MADHU, SUB INSPECTOR OF POLICE,
CHINGAVANAM POLICE STATION, KOTTAYAM.

6) K.M.MOHANDAS, 'KARTHIKA',
NEAR MANALEL PALLY,
ARPOOKARA WEST P.O., KOTTAYAM.

BY GOVT. PLEADER SRI.LAKSHMI NARAYANAN FOR R1 TO 3.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 07/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PETITIONERS' EXHIBITS:-

Ext.P1: **Copy of the order dtd.22.2.1998 in OP.No.314/1993.**

Ext.P2: **Copy of the order in review petition in OP.No.314/1993 dated 3.12.1996.**

RESPONDENTS' EXHIBITS:- **NIL.**

(true copy)

P.A. TO JUDGE.

Kvs/-

T.R.RAMACHANDRAN NAIR, J.

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O.P.No. 19330 of 1998-A.

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Dated this the 7th day of September, 2007.

J U D G M E N T

The petitioners herein are aggrieved by the orders passed in execution by the Consumer Forum namely, respondent No.3 by which a non bailable warrant was issued. The short facts are; the 6th respondent lodged a complaint before the 3rd respondent as OP.No.314/1993 claiming compensation for delayed and defective construction of a house. As per Ext.P1 order the same was allowed. The opposite party therein is M/s.C.S.Company, Engineering Contractors. It appears that a review petition was filed by the 6th respondent which resulted in Ext.P2 order finding that no review is necessary. Subsequently execution proceedings were started which resulted in issuance of a non bailable warrant. It is also stated that payments have been effected by the judgment debtor in the meanwhile. The petitioners were arrested on 13.5.1998 at about 3.00 am. It is averred that even without granting time to change her dress she was led to the police station and kept there till 11.30 am. till they were brought before the 3rd respondent Forum. Even they were not allowed to contact their relatives.

2. The petitioners challenge the constitutional validity of Sections 10 and 27 of the Consumer Protection Act. The issue whether a warrant of arrest can be issued for recovery of money by the Consumer Redressal Forum came up for consideration before this Court in *Jancy Joseph V. Union of India* (1999(1) KLT 422). After considering the provisions of Sec.56 of the CPC it was held that, when the Forum is executing an order for recovery of money, it cannot order the arrest of a women for recovery. This decision was affirmed by a Division Bench on this Court in *Mary Chacko v. Jancy Joseph* (2005(3) KLT 925. It was held therein as follows:-

> **"When a decree for money is sought to be executed under S.25 of the Consumer Protection Act by a Civil Court, necessarily Civil Court has to bear in mind S.56 of the Code of Civil Procedure which states that the Court shall not order the arrest or detention in the civil prison of a woman in execution of a decree for payment of money. Therefore, when Civil Court is executing an order passed by the Forum it cannot order arrest of a woman for recovery of the amount. S.27 of the Act also confers additional power upon the Forum to execute its order. When an order is sought to be executed under S.25 by a Civil Court, woman cannot be arrested in execution of the order passed by the Forum since S.56 is applicable in execution of the decree through a Civil Court. Same analogy could be applied when the Forum itself seeks to execute a similar order under S.27 of the Act. Just like Civil Court, in our view, Forum should also bear in mind the provisions of the Code of Civil Procedure when an application is made before it for arrest of a woman in execution of money decree. The Forum should bear in mind the provisions of the Code of Civil Procedure when powers under S.27 are exercised. We also subscribe the same view when an application is made not only under S.25 but also**

under S.27 of the Act for execution of an order passed by the Forum for realisation of money. Provisions of the Consumer Protection Act cannot be equated with that of the RDB Act especially when the order has been passed for realisation of money."

3. In the light of the dictum laid down by this Court it is clear that the 3rd respondent had no power to issue warrant of arrest against the 1st petitioner. Pursuant to the issuance of warrant of arrest the 1st petitioner had to suffer real hardship also. This exercise of power by the Consumer Forum resulting in such hardship that too to a woman ought to have been avoided. The authorities concerned have not kept in mind the well accepted position in law that a woman cannot be arrested in execution of an order. The reason for executing the warrant at 3.00 am. is also not discernible. The same is ununderstandable also.

4. As regards the challenge against the Constitutional validity of Section 27 it is pointed out that the same has been repelled in *Ravikant & Anr. v. Nati. Con. Disputes Redressal Commn. & Ors.* (1997(2) CPR 65). Therefore, the said prayer of the petitioners cannot be granted in this proceedings.

5. It is upto the petitioners to resort to such proceedings for the mental agony suffered by them. It is pointed out by the learned Government Pleader that the police only acted as per the order from the Consumer Forum

and they were only executing the warrant.

The writ petition is disposed of accordingly giving liberty to petitioners to seek appropriate remedies available under law. No costs.

T.R.RAMACHANDRAN NAIR, JUDGE.

Kvs/-